

DEC 31 2009

PATENT APPLN. NO. 10/566,655
RESPONSE UNDER 37 C.F.R. § 1.116

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REMARKS

In the Final Action the Examiner has maintained the 35 U.S.C. § 102 and 35 U.S.C. § 103(a) rejections based on Okabe et al., JP 2003-031219 ("Okabe"), and the 35 U.S.C. § 103(a) rejection over Okabe in view of Uemura et al, US 2002/0012830 ("Uemura"), that were made in the previous Office Action dated February 27, 2009.

The Final Action should be withdrawn because the final rejections are based on the Examiner's misunderstanding or misinterpretation of the limitation " $0.05 \leq b$ " described in paragraph [0026] of Okabe (English translation).

The Examiner relies on Okabe as disclosing a non-aqueous electrolyte secondary battery in which the positive active material of the positive electrode contains a compound of the formula $\text{Li}_{1-x}\text{Mn}_x\text{Ni}_y\text{Co}_z\text{M}_b\text{O}_2$. On page 3 of the Final Action, lines 5-6, the Examiner states: "M can be any number of elements, including Zr, in an amount preferably 5% or $b \leq 0.05$ (paragraphs 0024-0026)". (Emphasis applicants'). This statement is incorrect.

OKABE DOES NOT DISCLOSE " $b \leq 0.05$ " or, that "b" is less than or equal to 0.05.

In paragraph [0026], cited by the Examiner, Okabe discloses: "[i]t is preferred to satisfy $0 < z+b \leq 0.4$ especially and it is preferred to especially satisfy $0.05 \leq b$. By satisfying these

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formulas can show higher safety." (Emphasis applicants'). The expression " $0.05 \leq b$ " means 0.5 is less than or equal to b or, stated differently, b is greater than or equal to 0.05. The expression cannot be characterized, or interpreted, as meaning that $b \leq 0.05$. (Applicants note that the symbol " \leq " is equivalent to the symbol " \leq ").

The Examiner has also not properly characterized applicants' argument regarding Okabe made in the response filed June 29, 2009. In the response, applicants argued:

"Second, Okabe discloses that the amount of element M is preferred to especially satisfy $0.05 \leq b$ to 'show higher safety.'" (Response filed June 29, 2009, page 8, lines 10-11, emphasis added herein).

However, in the "Response to Arguments" section of the Final Action in lines 1 and 2 of the last paragraph on page 7, the Examiner quotes the argument as:

"Okabe discloses that the amount of element M is preferred to especially satisfy $b \leq 0.05$...".

Since the final rejections depend on the erroneous characterization of the teachings of Okabe and of applicants' arguments, the rejections are improper and should be removed and the Final Action withdrawn.

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It is noted that applicants' undersigned representative called the Examiner on December 17, 2009, and left a voice mail message stating that it appeared that she did not properly understand the expression "0.05<=b" in Okabe and requesting that she contact him to discuss this matter. The Examiner did not return the call.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,

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